



Session 40

Employment law 1

Contracts

Employment contract

By an individual contract of employment, the employee is bound, for a determined or undetermined period, to work in the service of the employer, whereas the latter is to pay a wage set according to the time period or the work performed (time work or piece work) (CO, art 319; CCQ 2085).

What is particular of such contracts is the principle of subordination where the employee is bound to follow the employer's orders; hence a hierarchy of power. This is one of the determinant features (the second being "regularly") to establish whether one is under an employment contract of a mandate or self-employed

See: <http://www.minkenemploymentlawyers.com/employment-law-issues/who-is-an-employee-and-why-does-it-matter/>

Employment contract (cont.)

The contract is deemed to have been concluded where the employer accepts the performance of work over a certain period in his service which in the circumstances could reasonably be expected only in exchange for salary (CO art 320); thus in CH the mere fact of accepting an employee in his service is sufficient for the establishment of a contract.

A contract of employment is in principle freely concluded.

Employment contract (cont.)

Particulars:

- The contract can be concluded for a determined or undetermined period (CO art 334, 335; CCQ 2086)
- The provisions are the same whether the employee undertakes the performance to work on an hourly, half-day or daily basis (part-time work) (CO, art 319).
- There is no required form for an employment contract (i.e. can be either verbal or in writing), except when related to certain categories of employees such as apprentices and traveling sales representatives or when a standard contract or collective agreement are in force.
- Some items maybe implied and others explicitly stated.

Employer obligations

The employer has the following liabilities (CO art 322 ff):

- Pay the wages that have been agreed or set through collective agreements.
- Compensate overtime work.
- Make contributions to social security.
- Pay any shares in the profits or bonuses the employee is entitled to.
- Reimburse any expenses incurred necessary for the performance of work.
- Make all payments in due time.
- Equip the employee with all the necessary tools for the work.
- Provide a safe workplace.
- Assign work that is legal.

Employer obligations (cont.)

The employer has the following liabilities (CO art 322 ff):

- Give consideration and protect the person of the employee (CCQ 2087).
- Cannot transfer the obligations arising from the contract to a third party (compare CCQ 2097).
- Cannot impose overtime work if this exceeds legal provisions.

Employee obligations

The employee has the following liabilities (CO art 321; CCQ 2088):

- Has to perform the work assigned to in person.
- Perform the work with diligence.
- Follow in good faith any general orders issued by the employer.
- Treat with due care the tools given by the employer.
- Is liable for damages resulting from negligence or willful intention.
- Has a duty of loyalty to the employer.
- Has a duty of secrecy.
- Account of any sums of money the employee uses.
- Give the employer any product resulting from the performance of work.
- Carry out overtime as the circumstances or the employer require.

Termination

In principle termination takes place according to the nature of the employment contract. Thus:

- A contract of determined period terminates without being necessary to give notice (CO, art 334).
- A contract of undetermined period can be terminated by each of the parties (CO, art 335).

Thus in the case of a contract of undetermined period notice is required (CCQ 2091); termination may occur without cause as long as the notice period and the obligations are respected.

If a contract of determined period is tacitly extended it is considered of undetermined period (CO art 334 al 2; CCQ 2090) – in CH “rule of 3”

Abusive termination

Termination is considered to be abusive (CO, art 336) in the following cases:

- Personal features such as sex, race and age.
- When exercising a constitutional right such as the freedom of religious practice.
- To prevent the other party from filing claims resulting from the employment contract (see CCQ 2092).
- When the other party asserts claims resulting from the contract of employment.
- When the other party is performing a legal duty.
- On grounds of belonging to a workers union.

Abusive termination (cont.)

Termination is considered to be abusive (CO, art 336) in the following cases:

- When the employee is a representative of a workers union.
- When the employee is prevented from working due to illness and accident.
- In cases of pregnancy.
- When the employee takes part in a relief organization.

See also [CO art 336c](#)

Termination with immediate effect

Termination with immediate effect (i.e. at any time), by either the employer or the employee, can take place for just (right) motives (CO, art 337; CCQ 2093) . Just (right) motives are those motives which, according to the rules of good faith, cannot allow the continuation of working relations mainly for two reasons:

- A mistake that is serious enough to destroy mutual confidence (e.g. vicarious liability – see <http://www.minkenemploymentlawyers.com/employment-law-issues/vicarious-liability-when-employers-are-responsible-for-employee-conduct/>)
- Particular circumstances that require the protection of employer assets.